IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5691 OF 2004

Avinash Tukaram Sanas ..Applicant.

V/s.

The State of Maharashtra .. Respondent.

Shri Samir A. Vaidya for the Applicant.
Shri A.S. Gadkari, APP for the Respondent State.
Shri Ramrao Adid, Sr. Counsel with Rishi Bhatta for Complainant.

CORAM : A.M.KHANWILKAR,J.
DATED : JANUARY 18, 2005

PC :-

. Heard counsel for the parties.

2. This application is filed by accused No.7 for bail in connection with A.C.B Special Case No. 68/2002. The applicant had filed application for bail before the lower court, claiming parity along with the co-accused P.D. Wani, who has been released by the apex court and co-accused Sanjay Gangadhar Patil, released on bail by this court, relying on the observations in Wani's case. The court below has however, rejected the Applicant's application on the reasoning that the applicant had filed application for bail on the earlier occasion, which was rejected by

the High Court and that order was subsequently confirmed by the Apex Court. This is the only reason which I could discern from the impugned order.

3. Having considered the rival submissions, in my opinion, as the respondents have accepted the decision of this court dated December 22, 2005 in Sanjay Gangadhar Patil's case, the respondents cannot be heard to contend that the observations of the Apex Court in Wani's case cannot be pressed into service by the co-accused, claiming parity. For, this court has already considered that aspect and ruled against the respondents. So understood, the sole reasoning recorded by the court below cannot be sustained. The question that however, remains to be considered is, whether the applicant is entitled to claim parity. The respondents in the affidavit filed before the trial court as well as this court have clearly asserted that the case of the applicant is clearly distinguishable from the case of the accused who are already enlarged on bail. The circumstances to support this contention are highlighted in the reply affidavit, interalia, in para 4 of the affidavit filed before this court. It is common ground that those aspects were pressed into service before the lower

court but the lower court has not analysed the same on merits. Whereas, it proceeded to non-suit the applicant merely because his earlier application for bail came to be rejected by this court, which order was confirmed by the Supreme Court. That reason is obviously improper because the earlier bail application preferred by the applicant was on the ground of infraction of mandatory requirement of section 167 as well as section 309 of the criminal procedure code. That does not mean that the applicant will be precluded to apply for bail on merits and more so on the ground of parity along with the co-accused who are already released on bail.

4. Accordingly, the appropriate course, to my mind, is to relegate the applicant before the Special Judge Greater Mumbai, who in turn shall decide the question regarding parity on its own merits in accordance with law. All questions in that behalf are left open.

5. The application is disposed of accordingly.

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